

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Application of)	
Consumers Energy Company)	Case No. U-16149-R
for Reconciliation of the Gas Cost)	
Recovery Costs and Revenues for)	
the 12-month Period April 2010 -)	
<u>March 2011</u>)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on August 3, 2012.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 4300 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before August 17, 2012, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before August 27, 2012.

The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

August 3, 2012
Lansing, Michigan

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On June 30, 2011, the Consumers Energy Company (Consumers, Company, or CECO) filed an application requesting that the Michigan Public Service Commission (Commission) conduct a Gas Cost Recovery (GCR) Reconciliation proceeding and approve Consumers' reconciliation determinations for the 12-month period ended March 31, 2011 (Plan Year). At a September 12, 2011, pre-hearing conference, counsel appeared on behalf of Consumers, the Michigan Public Service Commission staff (Staff), the Attorney General for the State of Michigan (Attorney General), the Michigan Community Action Agency Association (MCAAA), and the Residential Ratepayer Consortium (RRC). At the pre-hearing conference, intervenor status was granted to the Attorney General, MCAAA, and RRC and a schedule was adopted. An evidentiary hearing was conducted on April 11, 2012, at which, the pre-filed testimony of the witnesses

was bound into the record and exhibits were admitted into evidence. No cross-examination was conducted. On May 14, 2012, briefs were filed by the parties. On June 7, 2012, reply briefs were filed by Consumers, the Attorney General, RRC, and MCAAA. The record consists of testimony contained in the 144 page transcript and 33 exhibits.

FINDINGS OF FACT

Introduction

Consumers presented the testimony of David W. Howard, Director of Gas Supply; Michael A. McKimmy, Principal Engineer; Amy M. Pittelkow, Senior Accounting Analyst, and; Erin A. Rolling, Senior Rate Analyst; all employed by Consumers. Mr. Howard provided direct testimony designed to demonstrate that Consumers' gas expenditures were reasonable, prudent, and consistent with its GCR Plan. In addition, he provided rebuttal testimony to address matters raised by the Attorney General and RRC. He sponsored exhibits A-1 through A-8 and A-20 through A-22. Mr. McKimmy's testimony addressed operational decisions made during the Plan Year. He sponsored exhibits A-9 through A-15. Ms. Pittelkow testified about accounting matters and Consumers' Plan Year over-recovery. She sponsored exhibits A-16 through A-18. Ms. Rolling provided testimony addressing Consumers proposed refund of the over-recovery. She sponsored exhibit A-19.

The Attorney General presented the testimony of Ralph E. Miller, an independent consulting economist. Mr. Miller's testimony focused on his analysis

of Consumers' fixed price purchases (FPPs). Mr. Miller sponsored exhibits AG-1 through AG-4. Based on his analysis, Mr. Miller recommends a disallowance for a portion of the cost of gas purchased on September 21, 2009 (the September Purchase).

RRC presented the testimony of Frank J. Hollewa, an independent energy consultant, d/b/a EPEC. Mr. Hollewa's testimony addressed his analysis of Consumers' fixed price gas purchasing procedures and costs.

Staff presented the testimony of Theresa McMillan-Sepkoski, an Auditor in the Commission's Regulated Energy Division. Her testimony addressed Staff's calculation of Consumers' over-recovery. She sponsored exhibits S-1 and S-2.

Overview of Undisputed Matters

There were very few factual disputes presented in this case. The following is a summary of the factual findings established by the testimonial and documentary evidence.

The GCR Plan (Plan) in effect for the Plan Year was approved by the Commission on December 21, 2010. See U-16149, Order (December 21, 2010).

Consumers makes its gas purchases under the guidance of the Commission approved Gas Purchasing Strategy Guidelines (Purchasing Guidelines)¹. The Purchasing Guidelines in effect during the Plan Year were first approved by the Commission on March 2, 2010. 2 Tr 23. See U-15704, Order (March 2, 2010). As stated by Consumers' witness, Mr. Howard, the Purchasing Guidelines "establish purchasing objectives covering GCR period gas supply

¹ The Purchasing Guidelines were admitted into evidence as exhibit A-2.

requirements through utilization of a Tiered Fixed Price Purchase Guideline and a Quartile Fixed Price Triggers Guideline.” 2 Tr 24. Pursuant to the Purchasing Guidelines:

The maximum percentage of gas purchases in the GCR Year subject to Tiered Fixed Price Purchase and the Quartile Fixed Price Triggers will be capped at 90% of the total GCR requirements for the current GCR year and 60% per year for the second and third GCR years and 20% for the fourth GCR year. If however, the average of the 12 NYMEX natural gas contracts falls below the first quartile, the cap for the second and third GCR years will increase to 70% of the total GCR requirements in that year and the annual cap for the fourth GCR year will increase to 25% of the total GCR requirements in that year. Exh A-2, p 4.

It is the responsibility of the Senior Vice President of Electric and Gas Supply to exercise discretion in administering the Purchasing Guidelines. Exh A-2, p 4.

Exhibit A-4, p 1-2, identifies the quartile fixed price purchases made for the Plan Year. At 2 Tr 30, Consumers’ witness, Mr. Howard, provided the rationale offered by Consumers to justify its purchasing, by stating:

The historical price ranges or quartiles that applied for the 2010-2011 GCR period required fixed price triggers at or below the second quartile. In October 2008, the then current NYMEX price of gas for the 2010-2011 GCR year fell into the second quartile when the 2010-2011 GCR year qualified as the third GCR Year, requiring Consumers to fix the price on up to 10% of the total estimated supply required for the balance of the Third GCR Year, which was not yet under fixed priced contracts. This amount totaled approximately 213 Bcf of which 21 Bcf was purchased in October 2008 due to the quartile triggering at the beginning of October. The quartile triggers continued to be executed each month until such time the fixed price purchases reached the annual cap of 60% of total annual requirements. In March 2010, the current NYMEX price of gas for the remaining 2010-2011 GCR period, which then became the current GCR period with an annual cap of 90% of annual requirements, fell into the first quartile requiring Consumers to fix the price on up to 25% of the total estimated supply required for the balance of the current year which was not yet under fixed price, and, therefore, the Company made additional fixed price

purchases in March and April 2010. The purchases increased the fixed priced coverage from 60% to 90% by May 2010 in accordance with the Gas Purchasing Strategy Guidelines.

In general, Consumers purchases gas from various suppliers and supply basins. 2 Tr 25. This diversity is intended to provide Consumers a more reliable supply and to provide a greater number of price options as circumstance change. 2 Tr 25. Consumers takes advantage of its gas storage facilities to lessen its need for firm pipeline capacity. 2 Tr 25-26.

For the Plan Year, GCR sales were 7,328 MMcf less than projected in the Plan and GCR purchases were 24,193 MMcf less than projected in the Plan. 2 Tr 26. Exh A-1, p 1.

Absent any disallowances, Consumers had an over-recovery of \$4,321,346, plus interest of \$1,484,555, for the Plan Year. 2 Tr 139-40. The over-recovery is subject to “roll-in” treatment under Consumers’ Standard refund Procedures, as described in Rule C.7.2 of its tariff. 2 Tr 97.

Facts related to the Attorney General’s Recommended Disallowance

As noted above, the Attorney General recommends disallowing a portion of September Purchase’s cost. The following factual determinations relate to this issue.

In exhibit AG-2, the Attorney General shows, in graphical form, the April 2009 to March 2010 history of Consumers’ forecasts of the Plan Year gas requirements. The graph shows that Consumers’ forecasts changed from each month to the next, with July 2009 being the lowest forecast, at 191.9 Bcf, and

September 2009 being the highest forecast, at 195.4 Bcf. Only May 2009 and March 2010 shared the same forecasted requirements.

The Purchasing Guidelines dictate that the “maximum percentage of gas purchases [for the second GCR year²] subject to Tiered Fixed Price Purchase and the Quartile Fixed Price Triggers will be capped at . . . 60% [of the total GCR requirements for the current GCR year³]”. See Exh A-2, p 4. Exhibit A-5, from Case No U-15704-R⁴, shows that Consumers approached the 60% fixed price purchase limit in May, 2009, with 59.525% of its forecast gas needs under fixed price contracts. U-15704-R, Exh A-5. The same exhibit shows that Consumers exceeded the 60% fixed price limit from June 2009 through August 2009⁵. U-15704-R, Exh A-5. Based on its higher September 9, 2009, forecast of its Plan Year gas requirements (September Forecast), Consumers dropped under the limit, to 59.365%, in September 2009. U-15704-R, Exh A-5. However, as a result of the one Bcf September Purchase and lower projected needs, Consumers, again, exceeded the 60% limit for October 2009 through February 2010.⁶

Mr. Howard explains the September Purchase, by stating, at 2 Tr 54:

The purchase requirement run date was 09/09/09. The total requirements were 195.4 Bcf. Fixed price purchase volume were 116.0 Bcf. Dividing 116.0 by 195.4 resulted in a fixed price

² In this case, the second GCR year is April 2009 through March 2010.

³ In this case, the current GCR year is April 2010 through March 2011,

⁴ Consumer's witness, Mr. Howard, makes reference to this exhibit as part of his rebuttal testimony. While the exhibit was not admitted into evidence, in this case, it was admitted into evidence in Case No U-15704-R. No party made objection to the witness' use of an exhibit not in evidence and the exhibit will be relied upon in this PFD.

⁵ By dividing line 17 by line 16 of exhibit A-5 (from Case No U-15704-R), the actual percentages may be calculated and were 60.010% for June, 60.701% for July, and 60.448% for August.

⁶ Actual percentages were 60.681% for October, 60.639% for November, 60.555% for December, 61.056% for January, and 60.773% for February.

coverage percentage of 59%⁷. The remaining index purchases were 79.4 Bcf. The guidelines that were in place provided for fixed price purchases of up to 20% of remaining purchases up to a 60% cap. Multiplying 60% times total requirements resulted in a cap of 117.3 Bcf⁸. This resulted in an additional fixed price purchase amount of up to 1.3⁹ Bcf. The additional September 2009 first quartile purchase of 1.0 Bcf as shown on my Exhibit A-4, page 5 in the current case was consistent with the gas purchasing strategy guidelines in place at the time of the purchase.

Mr. Howard adds that the September Purchase “was executed in accordance with the Company’s Gas Purchasing Strategy Guideline in order to meet the 60% annual cap”. 2 Tr 55.

The September Purchase was approved by the Commission on December 21, 2010, in the Plan case; Case No U-16149.

Addressing the September Forecast upon which Consumers relied to find additional space under the 60% cap, Mr. Howard states, at 2 Tr 55-56:

The increase in GCR purchase requirements from August 2009 to September 2009 is primarily due to a monthly update which resulted in a lower GCC forecast. The lower GCC forecast was based on the actual trend or change in number of GCC customers and the actual use per customer at the time and thus was the best information available.

“Historically, a change in direction in GCC participation typically (but not exclusively) has occurred at the start of the fiscal April through March period.” Exh AG-1, p 5.

As Mr. Howard noted in his testimony, the Guidelines state that “[i]t is the responsibility of the Senior Vice President of Electric and Gas Supply to exercise discretion in administering [the Purchasing Guidelines].” 2 Tr 75

⁷ Actual percentage was 59.3654%, $(116.0/195.4 = .593654)$.

⁸ Actual “cap” was 117.24 Bcf, $(.60 \times 195.4 \text{ Bcf} = 117.24 \text{ Bcf})$.

⁹ Actual figure is 1.24 Bcf.

Exhibit AG-3 demonstrates that from January 15, 2009 through September 21, 2009, the date of the September Purchase, the price of futures contracts for the Plan Year were relatively stable and declined, overall.

At 2 Tr 115-16, the Attorney General recommends the removal of \$987,075 from Consumers cost of gas, explaining that:

If Consumers had not made its September 2009 fixed price purchase, its next purchase of gas for the Reconciliation Period would have been made in March 2010. . . .

The September 2009 fixed price purchase was 5,000 Dth per day of gas supplies into Panhandle during April 2010 through October 2010. The wellhead price for that purchase was \$5.26 per Dth However, the NYMEX component of that total price was \$5.73 per Dth, because there was a negative "basis" for the purchase into Panhandle.

Consumers made two fixed price purchases in March 2010 for the period April 2010 through October 2010, one on March 1 and the other on March 12. . . . NYMEX components of the prices for those two purchases were \$4.975 for the March 1 purchase, and \$4.64 for the March 12 purchase. The average of these two NYMEX price components is \$4.8075 per Dth. The \$4.8075 average of the two March 2010 NYMEX components is \$0.9225 per Dth less than the NYMEX component of \$5.73 that Consumers actually paid for its September 2009 fixed price purchase. [Applying] this NYMEX price differential of \$0.9225 per Dth to the September purchase quantity of 1,070,000 Dth [produces] the cost savings that Consumers would have obtained if it had not made its September 2009 fixed price purchase. Exhibit AG-4 shows these calculations.

POSITIONS OF THE PARTIES

Introduction

Consumers argues that its gas purchases were made in a reasonable and prudent manner, consistent with the approved GCR Plan. Consumers calculates

an over-recovery of \$5,805,901, subject to roll in treatment under its standard refund procedures.

Staff calculates an over-recovery of \$5,805,901 and otherwise finds the purchases reasonable and prudent.

The Attorney General recommends a \$987,075 disallowance based on his argument that the September Purchase was not reasonable and prudent.

MCAAA supports the Attorney General's position.

RRC supports the Attorney General's position and urges a reporting of the results of its audit of Consumers' fixed price purchasing for the Year.¹⁰

¹⁰ At MCC Init Br, p 2-3, MCC reports the findings of its audit as follows.

As part of his examination of Consumers Energy Company's fixed price purchases (FPP) during and for the 2010-2011 GCR period, RRC witness Hollewa testified that:

"The fixed price purchases (FPP) made by the Company for the 2010-2011 GCR Year cost approximately \$348.2 million more than prices at Index. A detailed breakdown by pipeline is as follows:

Pipeline	Total Volume (Mdth)	Excess Cost (\$000)	Excess Cost/Dth
Trunkline	61,702		\$177,298.8
			\$2.8735
GL+GL/ANR	45,690		\$87,503.8
			\$1.9152
Panhandle	26,908		\$58,607.1
			\$2.1781
Vector	10,700		\$18,618.0
			\$1.7400
Citygate	<u>8,060</u>		<u>\$6,193.6</u>
			<u>\$0.7684</u>
Total	153,060		\$348,221.3
			\$2.2751

If the Company had made all purchases at monthly Index prices instead of the FPP program, the net impact would have been a lower GCR Factor of approximately \$1.96/Mcf (\$6.76 - \$4.80 using Exhibit A-16). This would have been a reduction of GCR costs of approximately 29%." TR 121.

Mr. Hollewa further explained that since the 2006-2007 GCR period, CEC's use of FPP to secure its supply requirements has resulted in **\$1.236 billion** in excess costs for the GCR customers. He testified that:

"The only period in which savings occurred was the 2008-2009 GCR Year and that was only \$25.0 million. In the 2006-2007 GCR Year, the excess cost of supply from the FPP program

The September Purchase

The Attorney General recommends a disallowance of \$987,075 associated with the September Purchase. Consumers rejects the Attorney General's recommendation and argues that the September Purchase was "made in accordance with Quartile Fixed Price purchase requirements", was "consistent with" the Purchasing Guidelines, "was reasonable and prudent in light of information available at the time of the purchase", and was previously identified in GCR Plan Case, Case No U-16149 and in Case No U-15704-R. Consumers Init Br, p 13.

Consumers maintains that, "consistent" with the Guidelines, it "undertook a review in September 2009 and based upon the results of that review purchased approximately 1 Bcf of additional fixed price gas." Consumers Init Br, p 15. Consumers continues by arguing that the higher September Forecast "was primarily due to an update which resulted in a lower Gas Customer Choice forecast and was based on the best information available at the time."

compared to purchases at monthly Index was \$300.0 million. In the 2007-2008 GCR Year, the excess cost was \$97.0 million. In the 2009-2010 GCR Year, the excess costs were \$515.9 million. In the 2010-2011 GCR Year, the excess costs were \$348.2 million." TR 122.

Because this GCR Reconciliation proceeding is an audit of the Company's performance during the relevant GCR plan period, it is important that the Commission have data that measures that performance. Mr. Hollewa's testimony is strong evidence that the GCR customers have paid a steep price for the FPP guidelines without receiving commensurate value in return. Stated another way, if Consumers Energy Company had simply purchased gas at the First of the Month Index price -- a strategy that makes purchases at market prices-- the GCR customers would have saved \$348.2 million in GCR costs in 2010-2011 and \$1.236 billion over the past five GCR periods. Given the current and projected stability in the natural gas market, the original rationales for the

Consumers Init Br, p 17. Consumers adds that the “fixed price coverage percentage was determined by the Company using the best information available at the time the decision to purchase an additional 1 Bcf was made.” Consumers Init Br, p 15.

In short, Consumers argues that the “September 2009 quartile fixed price purchase was executed at the current NYMEX market price and was reasonable and prudent based on the information available at the time of the purchase” and that, therefore, “[n]o disallowance is appropriate.” Consumers Init Br, p 18 (citation omitted).

The Attorney General responds by arguing that Consumers’ “arguments are mechanistic and represent a position that so long as the wording of guidelines would mathematically permit the Company to buy more natural gas, then doing so is reasonable and prudent.” AG Reply Br, p 2-3. The Attorney General believes that “[t]his mechanistic analysis” ignores the statutory requirement that natural gas utilities minimize the cost of purchased gas and ignores the Purchasing Guidelines’ requirement that the Senior Vice President of Electric and Gas Supply exercise discretion in administering the Purchasing Guidelines. AG Reply Br, p 3

The Attorney General continues by arguing that NYMEX futures trading between January 15, 2009 and September 21, 2009 exhibited “stable pricing, if not a declining price trend that was known or knowable to CECo before the . . . [September Purchase]”. AG Init Br, p 12. Additionally, the Attorney

FPP guidelines are no longer applicable to Consumers Energy Company's purchasing practices.

General notes that the September Forecast “was significantly higher than any previous month” and that the September Purchase was made for deliveries that did not begin until April 2010. AG Rep Br, p 5. The Attorney General contends that reasonableness and prudence “must be determined in light of all known and reasonably foreseeable circumstances” and that “market trends and other evidence warranted exercising discretion in waiting to see what the Company would forecast in October.” AG Init Br, p 15-16. Thus, according to the Attorney General, it was not reasonable and prudent for Consumers to make the September Purchase, based solely upon the higher September Forecast. AG Init Br, p 13-14.

Consumers argues that the September purchase decision “must be evaluated in light of the GCR Plan and existing conditions at the time the decision was made.” Consumers Rep Br, p 7. Consumers argues that it would not have been reasonable to delay the September purchase “based on speculation” “that GCR requirements might change in the future” or “that future market prices might be lower than the [then] current market price”. Consumers Rep Br, p 8, 10.

Consumers argues that the Attorney General’s suggestion that Consumers should have delayed the September Purchase is “a variation of the ‘beat-the-market’ reasoning that the Commission [has] rejected”. Consumers Rep Br, p 10. Consumers adds that it followed its “disciplined strategy when it made the fixed price purchase that the . . . intervenors challenge. Delaying purchases based on reasoning that the Commission has found not to be persuasive would not have been reasonable.” Consumers Rep Br, p 11-12.

MCAAA argues that Consumers “was (or should have been) aware at or before the [September Purchase] that there was no need to rush into purchasing the 1 Bcf of fixed priced gas in the circumstances then prevailing”, i.e. lower monthly forecasted gas supply needs during the ongoing economic recession, falling gas sales, and increased gas storage levels. MCAAA Rep Br, p 3. MCAAA argues that the September Forecast “stands out as a lone outlier, or anomaly, compared to the other monthly forecasts” and adds “[i]t appears that . . ., for some reason, [Consumers] increased the [September Forecast] solely to provide it the ‘headroom’ to purchase the 1 Bcf of gas without violating the 60% purchase cap under its Plan and Guidelines. MCAAAA rep Br, p 3.

More fundamentally, MCAAA argues that Consumers has failed to meet the burden of proof required to establish that the September Purchase was reasonable and prudent. MCAAA Rep br, p 4. As MCAAA sees it, Consumers’ “response has been to rely on only the simplistic ‘partial defense’ that the purchase did not violate its approved plan and purchasing guidelines.” MCAAA Rep Br, p 4. MCAAA claims that Consumers “has failed to demonstrate, or even assert, a reason why it failed to use reasonable and prudent discretion and judgment in not undertaking the purchase” and, furthermore, that Consumers has simply failed to explain why it made the September Purchase. MCAAA Rep Br, p 4 (emphasis omitted).

In its reply brief, Consumers presents the argument that MCL 460.6h provides the statutory context to address intervenors objections. At Consumers Rep Br, p 2-4, Consumers states:

Act 304 provides that a utility, while not making any profit on the gas commodity, is to be reimbursed for the actual amount spent on acquiring the gas so long as the utility's actions were reasonable and prudent. The Legislature established a two stage process for recovery of the booked costs of gas sold. It established a process for annual GCR Plan case filings prior to the beginning of a GCR year and GCR Reconciliation case filings to be made following the end of a GCR year. A utility can never do better than recover the actual booked cost of gas sold. However, it can do worse if its actions are deemed imprudent. Because of this, the Legislature has balanced this risk to the utility with a process that requires a determination of the prudence of planned actions in advance.

Act 304 envisions that the Commission will review the prudence of a gas utility's Plan as part of its gas supply and cost review. MCL 460.6h(5) states:

"If a utility files a gas cost recovery plan and a 5-year forecast . . . the commission shall conduct a proceeding . . . for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility." (Emphasis added).

In other words, the Legislature envisioned that the evaluation of the reasonableness and prudence of the Plan will occur . . . in the Plan case so that the gas utility would be able to adjust its Plan if the Commission disagreed with any aspects of it. The Legislature designed the statute so that a utility will have this level of certainty to offset the one-directional risk that it faces for recovery of costs . . .

This conclusion is further supported by reference to language of MCL 460.6h(6), which includes the following provisions with respect to a final order in a GCR Plan case:

"In its final order in a [Plan case], the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly." . . . (Emphasis added).

Thus, this obligation to evaluate the reasonableness and prudence of the Plan is mandatory and not deferrable to the Reconciliation case.

The second step in the process is the GCR reconciliation proceeding. . . . In it the Commission is to reconcile revenues recovered with amounts expensed for cost of gas sold.

MCL 460.6h(12) includes the following:

“At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor . . . with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.”

The provisions of Act 304 quoted above, individually and taken as a whole, support a conclusion that following a “wait and see” attitude in the Plan case or advocating an open-ended retroactive review of decisions made is neither envisioned nor allowed by Act 304.

In accordance with statutory provisions, the review of the Plan filed by the Company is to occur as part of Plan case proceedings. With respect to purchases made for the 2010-2011 GCR year, the Commission considered and rejected arguments that the Quartile Fixed Price Purchase Guideline should be changed. A reconciliation case is not simply a second opportunity for an intervenor to reargue a position, to express disagreement with a determination in a Plan case, or to collaterally attack decisions made by the Commission in a Plan case.

Consumers then argues that the interveners objections are, “in actuality, [objections] with the approved Quartile Fixed Price Guideline itself and constitute[] a collateral attack on the Commission’s approval of guidelines that authorized the September 2009 fixed price purchase.” Consumers Rep Br, p 6.

Consumers adds that the “intervenors’ disagreement with the [September Purchase] does not result from any action taken by the Company that did not comport with the approved gas purchasing and operational strategies.” Consumers Rep Br, p 4. Rather, Consumers argues, the September Purchase was “consistent with the quartile fixed price gas purchase guidelines approved by the Commission and was consistent with the approved GCR Plan.” Consumers Rep Br, p 4. Consumers argues that it “should not, and cannot properly, be

penalized for having abided by fixed price purchase guidelines that the Commission concluded . . . were reasonable and prudent.” Consumers Rep Br, p 6.

Consumers continues by arguing that the intervenors have failed to identify “any changed circumstances subsequent to the Commission having approved the GCR guidelines which would have warranted disregarding the fixed price purchase provisions of the Gas Purchasing Strategy Guidelines.” Consumers Rep Br, p 6.

DISCUSSION

Statutory Provisions

MCL 460.6h states, in part:

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a gas utility's gas cost recovery plan, the commission shall commence a proceeding, to be known as a gas cost reconciliation . . . At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

(13) In its order in a gas cost reconciliation, the commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission

determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(14) In its order in a gas cost reconciliation, the commission shall authorize a gas utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. For excess costs incurred through actions contrary to the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through actions consistent with commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates that the excess expenses were reasonable and prudent. Such amounts in excess of the amounts actually recovered by the utility for gas sold shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for gas sold had been included in the gas cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a gas cost reconciliation, the refunds, credits, or additional charges shall include interest and shall be apportioned among the utility's customer classes in proportion to their respective usage during the reconciliation period. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess

recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the gas utility during the appropriate period, or the authorized rate of return on the common stock of the gas utility during that same period. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the gas utility during the appropriate period.

Factual Disputes

There appear to be no substantive factual disputes. Absent any disallowances, the parties agree that, for the GCR year ending March 31, 2011, Consumers had a net cumulative over-recovery of \$5,805,901 and that this over-recovery is subject to roll-in treatment under Consumers' Standard Refund Procedures, as described in Rule C.7.2 of its tariff.

September Purchase

The only area of dispute is the reasonableness of the September Purchase. In short, the Attorney General argues that Consumers should not have made the September Purchase based solely upon its higher September Forecast. Consumers argues that, consistent with the Guidelines, the higher September Forecast provided room under the 60% cap for the additional quartile fixed price purchase and that the purchase was, therefore, reasonable and prudent. Among other arguments, MCAAA directly challenges the legitimacy of the September Forecast by arguing that it appears Consumers increased the forecast for the sole purpose of providing room under the 60% cap for additional purchases.

In addition, as detailed above, Consumers argues that the intervenors' objections are with the Plan, itself, and that, under Act 304's two stage process of the GCR Plan case and the GCR Reconciliation case, such a collateral attack on the Plan is not permitted. This argument is rejected. The record developed and the arguments presented reveal that the intervenors' objections are directed to the reasonableness and prudence of the September Purchase. To the degree that the intervenors' objections relate to the Plan, the objections address Consumers' use, or lack thereof, of discretion in implementing the Plan. Additionally, even though the September Purchase was approved in the GCR Plan case, the Commission has recently made clear that, in GCR Reconciliation cases, it may reexamine the reasonableness and prudence of actual purchases that it has previously approved. See U-15704-R.

Thus, in this reconciliation proceeding, Consumers has the burden to establish that the September Purchase was reasonable and prudent. To do so, because the decision to make the September Purchase rested upon the September Forecast, Consumers must, first, establish the reasonableness and prudence of the September Forecast.

In defense of the September Forecast, Consumers merely states that the "increase in GCR purchase requirements from August 2009 to September 2009 is primarily due to a monthly update which resulted in a lower GCC forecast. The lower GCC forecast was based on the actual trend or change in number of GCC customers and the actual use per customer at the time and thus was the best information available." 2 Tr 55-56. This limited testimonial evidence is

insufficient to support a finding regarding the reasonableness of the September Forecast. As a result, Consumers has failed to meet its burden of establishing that the September Purchase was reasonable and prudent.

In making this finding, I recognize that the nature of this proceeding does not lend itself to a voluminous presentation of supporting evidence for every factual claim presented by Consumers. However, when challenged on a specific point, Consumers needs to present the appropriate witnesses to thoroughly explain its actions. This it did not do. Instead, with regard to the September Forecast, upon which the reasonableness of the September Purchase rests, Consumers presented one seemingly self-serving conclusory statement that touched on only one aspect of the forecast. No mention is made of the multitude of factors, including professional judgment, that should have been, and presumably were, considered in making the September Forecast. The scarcity of the evidence on this point is particularly stark given that the only contested matter in this case was the September Purchase and its underlying September Forecast. Consumers had ample opportunity to thoroughly address this issue in rebuttal. For whatever reason, it chose not to do so and, as a result, has failed to establish that the September Purchase was reasonable and prudent.

CONCLUSION

From the record, as a whole, with the exception of \$987,075 associated with the September Purchase, it appears that Consumers' actual expenses for gas sold during the Plan Year ending March 31, 2011, were incurred through

reasonable and prudent actions not precluded under the Commission approved Plan.

Consumers' over-recovery of \$5,308,421, plus accrued interest, shall be refunded pursuant to the procedures found in Tariff Rule C10.2(b).

Any evidence and arguments not specifically addressed in this Proposal for Decision were deemed irrelevant to the findings and conclusions of this matter.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

ISSUED AND SERVED: August 3, 2012
drr